

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/04/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000668

FILED: _____

STATE OF ARIZONA

GARY L SHUPE

v.

WILHELM G GRUENER

WILHELM G GRUENER
17212 W MARYLAND
WADDELL AZ 85355-0000

PHX MUNICIPAL CT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6043598

Charge: 3. EXCEEDING REGISTERED WEIGHT BY FEES PAID
LEGAL 0 LBS, ACTUAL 36350 LBS OVER 36350 LBS

DOB: 09-13-1965

DOC: 07-09-2001

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on February 13, 2002, and this decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the exhibits admitted, and the memoranda submitted by the parties.

The first issue raised by the Appellant concerns the constitutionality of A.R.S. Section 28-5437 and 28-5438. Specifically, Appellant contends that the fine of \$4,500 imposed by the trial court for the charge of operating a vehicle with a gross weight in excess of the vehicle's declared gross weight, was an excessive fine. There is no question but that the United States and Arizona constitutions prohibit excessive fines as a cruel and unusual punishment. A fine is excessive in violation of the Eighth Amendment to the United States Constitution when it is so grossly disproportional to the offense that it shocks the public conscience.¹

In this case Appellant was fined \$4,500. This fine was required by A.R.S. 28-5438(B). The mandatory fine is \$1,400 plus an additional "\$100 for each 1,000 lbs. of excess weight."² The evidence disclosed that Appellant was driving a truck with an undeclared weight in excess of 36,000 lbs. It is clear from the language of the statute that the legislature intended the courts to impose high fines to discourage overloading vehicles in excess of their declared weight capacity. This is an appropriate legislative concern, and it appears that the statute has been precisely crafted to achieve such a result. Clearly, the fine required by A.R.S. Section 28-5438(B) increases based upon each 1,000 lbs. of excess weight over the declared weight of a vehicle. This penalty does not appear to be unreasonable, nor does it shock one's conscience.

The other issues raised by the Appellant concern the sufficiency of the evidence to warrant his conviction. When

¹ See State v. Wise, 164 Ariz. 574, 795 P.2d 217 (App. 1990).

² See A.R.S. Section 28-5438(B).

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reviewing the sufficiency of the evidence, an appellate court must not re-weight the evidence to determine if it would reach the same conclusion as the original trier of fact.³ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.⁴ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁵ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁶ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁷ The Arizona Supreme Court has explained in State v. Tison⁸ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may

³ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁴ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁵ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁶ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P.490 (1889).

⁷ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁸ Supra.

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fairly differ as to whether certain
evidence establishes a fact in
issue, then such evidence must be
considered as substantial.⁹

This Court finds that the trial court's determination was
not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of guilt and sentence
imposed.

IT IS FURTHER ORDERED remanding this matter back to the
Phoenix City Court for all further and future proceedings in
this case.

⁹ Id. at 553, 633 P.2d at 362.
Docket Code 512